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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Geographic Partitioning and	)	WT Docket No. 96-148
Spectrum Disaggregation by	)	
Commercial Mobile Radio	)	
Service Licensees	)	
	)	
Implementation of Section 257	)	GN Docket No. 96-113
of the Communications Act --	)	
Elimination of Markey Entry	)	
Barriers	)	

To: The Commission

JOINT COMMENTS OF  
AIRTOUCH PAGING AND POWERPAGE, INC.

AirTouch Paging and PowerPage, Inc., by their attorneys, hereby jointly submit their comments in response to the Further Notice of Proposed Rulemaking (the "Further NPRM") in the Commission's above-captioned proceeding establishing geographic partitioning and spectrum disaggregation rules for commercial mobile radio services ("CMRS") licensees.<sup>1/</sup> The following is respectfully shown:

<sup>1/</sup> Report and Order and Further Notice of Proposed Rulemaking, FCC 96-474, released December 20, 1996.

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## I. Statement of Interest

1. AirTouch Paging and its affiliates<sup>2/</sup> are CMRS licensees providing local, state, regional, and nationwide messaging services. As a holder of paging licenses under Part 22 and Part 90 of the Commission's rules, AirTouch Paging provides one-way paging and messaging services throughout 30 states, with more than 2.4 million pagers in service. AirTouch Paging also holds one nationwide and three regional 50/12.5 KHz narrowband PCS licenses for which it was the high bidder in spectrum auctions conducted by the Commission. PowerPage also holds Commission licenses and provides paging services throughout the United States. AirTouch Paging and PowerPage thus have a direct and substantial interest in ensuring that the Commission's CMRS rules and policies are implemented fairly and are consistent with congressional intent that substantially similar common carrier services are subject to comparable regulatory treatment.<sup>3/</sup>

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2/ AirTouch Paging's licensed affiliates are AirTouch Paging of Virginia, Inc., AirTouch Paging of Kentucky, Inc., AirTouch Paging of Texas, Inc., AirTouch Paging of Ohio, Inc., and AirTouch Paging of California, Inc.

3/ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994); 47 U.S.C. § 332(c).

II. Spectrum Disaggregation and Partitioning  
Are Appropriate for Narrowband PCS

2. In the Report and Order adopted simultaneously with the Further NPRM, the Commission adopted spectrum disaggregation and geographic partitioning rules for broadband PCS, finding that numerous benefits result from granting operational flexibility to broadband PCS licensees.<sup>4/</sup> As the Commission notes in the Further NPRM, the Commission already has adopted, or is considering adopting, rules that permit spectrum disaggregation and geographic partitioning for many wireless services in addition to broadband PCS.<sup>5/</sup>

3. The Further NPRM acknowledges the benefits of providing operational flexibility to all CMRS licensees and specifically proposes extending disaggregation and partitioning rules to the cellular and the General Wireless Communications services.<sup>6/</sup> The Further NPRM also seeks comment on whether disaggregation and partitioning rights should be extended to other wireless services "that are

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4/ See Further NPRM, para. 2.

5/ See id., para. 93.

6/ Id., para. 94.

licensed on a geographic basis, or in spectrum blocks of sufficient size to make disaggregation practical.<sup>1/</sup>

4. AirTouch Paging and PowerPage believe disaggregation and partitioning rules are appropriate for narrowband PCS, and urge the Commission to adopt such rules in this proceeding. Like other CMRS for which disaggregation and partitioning have been proposed or adopted,<sup>2/</sup> narrowband PCS is licensed on a geographic basis.<sup>3/</sup> Moreover, the Commission has proposed adopting disaggregation and partitioning for messaging service providers with whom narrowband PCS licensees presently or in the future will compete -- in particular, one- and two-way paging licensees authorized under Parts 22 and 90 of the Commission's rules.<sup>4/</sup> Regulatory parity compels extending the same flexibility to narrowband PCS licensees.<sup>5/</sup>

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7/ Id.

8/ E.g., broadband PCS, 800 Mhz SMR, 900 Mhz SMR, 220 Mhz, Wireless Communications Services, cellular, GWCS, MDS, and paging. See Further NPRM, para. 93.

9/ Narrowband PCS licenses are awarded on a nationwide, regional, MTA, and BTA basis. 47 C.F.R. § 24.102.

10/ See, e.g., Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, Notice of Proposed Rule Making, 11 FCC Rcd 3108, para. 138 (1996).

11/ In Docket No. 93-252, the Commission classified both paging and narrowband PCS as competing CMRS. 9 FCC Rcd 1411, at paras. 102, 119, 123.

5. Significantly, the same benefits found to support the adoption of disaggregation and partitioning for broadband PCS<sup>12/</sup> apply to narrowband PCS. Thus, the enhanced flexibility will result in more efficient spectrum use, eliminate market entry barriers, promote competition, and expedite the initiation of service in underserved areas. For example, unsuccessful bidders in an auction, or companies that did not exist at the time the auction was conducted, may seek to enter the market through a partial assignment consistent with spectrum disaggregation and geographic partitioning rules. Similarly, small businesses seeking to enter the market to provide niche services and/or serve discrete geographic areas will benefit.

6. The broad flexibility accorded broadband PCS licensees with respect to disaggregation and partitioning should serve as a model for narrowband PCS. Specifically, the Commission should adopt rules under Part 24 that:

- \* require parties to seek the Commission's prior consent to a partitioning or disaggregation agreement involving a narrowband PCS license by filing an application that is placed on public notice;
- \* allow geographic partitioning of a narrowband PCS service area consistent with any service area defined by the parties to a partitioning agreement;

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<sup>12/</sup> See Further NPRM, paras. 2, 13.

- place no minimum or maximum limits on the size of the narrowband PCS service area that is partitioned or on the amount of narrowband PCS spectrum that is disaggregated;
- permit narrowband PCS Designated Entities and other entrepreneurs to partition and disaggregate their licenses subject to unjust enrichment provisions;
- require the partial assignee to meet the same construction requirements as the original licensee,<sup>13/</sup> or, allow the original licensee to meet the construction requirement and require the partial assignee to provide substantial service to the relevant service area;
- permit a combination of partitioning and disaggregation; and
- grant the partial assignee a license for the remainder of the original licensee's term, with a similar license renewal expectancy.

7. Finally, the Commission should not restrict disaggregation based on a concern that the amount of narrowband PCS spectrum does not make it "practical" to assign a portion of that spectrum.<sup>14/</sup> Narrowband PCS licensees may aggregate up to three licenses in any geographic area,<sup>15/</sup> and thus one or more licensees in any market may have sufficient spectrum to satisfy the needs of

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<sup>13/</sup> The build-out benchmarks for narrowband PCS and broadband PCS are comparable.

<sup>14/</sup> Further NERM, para. 94.

<sup>15/</sup> 47 C.F.R. § 24.101(a).

another potential market entrant. Moreover, just as the Commission recognized in the broadband PCS context that market forces may be distorted by imposing a minimum requirement on the amount of spectrum that may be disaggregated,<sup>15/</sup> a finding that a minimum amount of spectrum must be authorized before disaggregation will be permitted also may artificially alter market demand and thwart efficient spectrum use.

WHEREFORE, the foregoing premises duly considered, AirTouch Paging and PowerPage, Inc. respectfully request that the Commission adopt rules in this proceeding consistent with the foregoing.

Respectfully submitted,

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<sup>15/</sup> Id., para. 49.

CERTIFICATE OF SERVICE

I, Sharon Henry, a secretary with the firm of Paul, Hastings, Janofsky & Walker LLP, certify that I have on this 10th day of February, 1997, caused a true and correct copy of the foregoing Joint Comments of AirTouch Paging and PowerPage, Inc. to be hand-delivered to:

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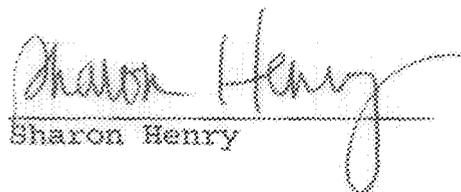
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